

AMENDED IN ASSEMBLY JUNE 30, 2005

AMENDED IN SENATE MAY 27, 2005

AMENDED IN SENATE APRIL 25, 2005

SENATE BILL

No. 668

Introduced by Senator Kuehl

February 22, 2005

An act to amend ~~Section 10295.5 of, and to repeal and add Section 20676 of, the Public Contract Code, and to amend Sections 2207, 2714, 2715, 2716, 2728, 2761, 2763, 2770, 2773.1, 2774, 2774.1, and 2775 of, to add Sections 2729.5, 2772.7, and 2772.8 to, and to repeal and add Sections 2731 and 2773.2 of, Sections 2774 and 2774.1 of the~~ Public Resources Code, relating to mining.

LEGISLATIVE COUNSEL'S DIGEST

SB 668, as amended, Kuehl. Mining.

(1) Existing law, the Surface Mining and Reclamation Act of 1975, requires a lead agency, as defined, to submit to the Director of Conservation a surface mining operation's reclamation plan, financial assurances, or amendments for review before approving the operation. The director may prepare written comments on the submitted plan, assurances, or amendments to the lead agency. Existing law requires the lead agency to respond to the director's comments and provide copies of the director's comments and the lead agency's response to the affected operator.

This bill would require the lead agency to provide a 30 days' notice to the director and the affected operator regarding the time, place, and date of a hearing before the lead agency on the approval of the plan, assurance, or amendment. If no approval hearing is required, the bill would require the lead agency to provide a 30 days' notice to

the director and the affected operator of its intent to approve the plan, assurance, or amendment. The bill would impose a new duty on a local agency by requiring the local agency to provide the required notice, thereby creating a state-mandated local program.

(2) Existing law requires the Director of Conservation, before taking an action to enforce the act, to either provide the lead action with a 15 days' notice of the violation or determine that the violation amounts to an imminent and substantial endangerment of the public health or safety, or the environment.

This bill would, instead, authorize the director, under specified circumstances to bring a writ of mandamus action against the lead agency to set aside the approval of a reclamation plan, financial assurance, or amendment. The bill also would authorize the director, under specified circumstances, to seek an injunction against a surface mining operation from operating pursuant to a reclamation plan, financial assurance, or amendment that does not conform to law.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~(1) Existing law requires the Department of Conservation, for purposes of complying with certain provisions regarding public contracts, to publish or otherwise make available, upon request, to the Department of General Services or a state agency, a list identifying certain surface mining operations. Existing law prohibits a state agency from acquiring or utilizing mined material unless the material is produced from a mining operation identified on that list.~~

~~This bill would also prohibit a state agency from contracting with a person utilizing these materials, as specified. These provisions would no longer apply to certain federal lands or Indian lands.~~

~~Existing law prohibits an operator of surface mines in this state, whose operations are not identified in that list, from selling California mined material to a local agency.~~

~~This bill would instead prohibit a contractor or a mining operator from selling any minerals to a local agency unless the contractor or mining operator certifies, under penalty of perjury, that the minerals are from a mining operation identified in the list.~~

~~Because this certification would be under penalty of perjury, the bill would impose a state-mandated local program by creating a new crime.~~

~~(2) Existing law requires the owner, lessor, lessee, agent, manager, or other person in charge of a mining operation to annually submit certain information in a report to the Director of Conservation, and to submit specified reporting fees to the State Mining and Geology Board. Existing law defines the term “mining operation” for purposes of these requirements, as a surface mine.~~

~~This bill would revise the definition of “mining operation” for purposes of these requirements to include any mining operation, including, but not limited to, a mining operation that is classified as a surface mine, and would impose those requirements upon the owner or operator of a mining operation.~~

~~(3) Existing law, the Surface Mining and Reclamation Act of 1975, governs surface mining operations and reclamation of mined lands. The act prohibits a person from conducting surface mining operations without obtaining a permit from the lead agency for those operations, and submitting and receiving approval for a reclamation plan and financial assurances from the lead agency. Existing law defines the term “operator” for purposes of that act. The act provides that it does not limit, among other things, the power of any city or county to regulate the use of buildings, structures, and land as between industry, business, residences, open space and other purposes.~~

~~This bill would revise the definition of the term “operator” and would additionally define the term “mineral owner” for purposes of the act. The bill would provide that the exemption of the act upon a city or county’s power does not apply to land designated as an area of regional significance or an area of statewide significance, as defined.~~

~~(4) The act requires the State Geologist to classify certain areas identified by the Office of Planning and Research, as areas containing little or no mineral deposits, or significant mineral deposits, or requiring further evaluation.~~

~~This bill would instead require the State Geologist to classify those areas that do not require further evaluation as an area that contains mineral deposits and that is not of regional or statewide significance, or an area that contains mineral deposits and that is either of regional or statewide significance.~~

~~(5) Existing law requires a lead agency, before permitting a use that would threaten the potential to extract minerals in specified areas, to~~

~~prepare a specified statement if the area is designated by the State Mining and Geology Board as an area of regional or statewide significance, and the lead agency either has designated that area in its general plan as having important minerals or otherwise has not yet acted, as specified.~~

~~This bill would additionally prohibit a city or county, in any area classified by the State Geologist or designated by the board as an area that contains mineral deposits and is an area of regional or statewide significance, in either its general plan, or in its resource management plan, from allowing the area to be used for, or permitting a use, that is inconsistent with the exploitation or development of that area for mineral excavation and production, until commercial production of the area so designated is completed. The bill would allow the city or county to permit part of the area to be utilized for a use not involving mineral exploitation or development, under specified circumstances.~~

~~(6) The bill would make other changes with respect to mining and reclamation activities, including revising provisions relating to the review of and appeals concerning surface mining permits, reclamation plans, and financial assurances for mining operations.~~

~~(7) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 ~~SEC. 20.—~~

2 ~~SECTION 1.~~ Section 2774 of the Public Resources Code is
3 amended to read:

4 2774. (a) Every lead agency shall adopt ordinances in
5 accordance with state policy that establish procedures for the
6 review and approval of reclamation plans and financial
7 assurances and the issuance of a permit to conduct surface
8 mining operations, except that any lead agency without an active
9 surface mining operation in its jurisdiction may defer adopting an
10 implementing ordinance until the filing of a permit application.

1 The ordinances shall establish procedures requiring at least one
2 public hearing and shall be periodically reviewed by the lead
3 agency and revised, as necessary, to ensure that the ordinances
4 continue to be in accordance with state policy.

5 (b) The lead agency shall conduct an inspection of a surface
6 mining operation within six months of receipt by the lead agency
7 of the surface mining operation's report submitted pursuant to
8 Section 2207, solely to determine whether the surface mining
9 operation is in compliance with this chapter. In no event shall a
10 lead agency inspect a surface mining operation less than once in
11 any calendar year. The lead agency may cause an inspection to
12 be conducted by a state-registered geologist, state-registered civil
13 engineer, state-licensed landscape architect, or state-registered
14 forester, who is experienced in land reclamation and who has not
15 been employed by a surface mining operation within the
16 jurisdiction of the lead agency in any capacity during the
17 previous 12 months. All inspections shall be conducted using a
18 form developed by the department and approved by the board.
19 The operator shall be solely responsible for the reasonable cost of
20 the inspection. The lead agency shall notify the director within 30
21 days of the date of completion of the inspection that the
22 inspection has been conducted. The notice shall contain a
23 statement regarding the surface mining operation's compliance
24 with this chapter, shall include a copy of the completed
25 inspection form, and shall specify which aspects of the surface
26 mining operations, if any, are inconsistent with this chapter. If
27 the surface mining operation has a review of its reclamation plan,
28 financial assurances, or an interim management plan pending
29 under subdivision (b), (c), (d), or (h) of Section 2770, or an
30 appeal pending before the board or lead agency governing body
31 under subdivision (e) or (h) of Section 2770, the notice shall so
32 indicate. The lead agency shall forward to the operator a copy of
33 the notice, a copy of the completed inspection form, and any
34 supporting documentation, including, but not limited to, any
35 inspection report prepared by the geologist, civil engineer,
36 landscape architect, or forester.

37 (c) Prior to approving a surface mining operation's
38 reclamation plan, financial assurances, including existing
39 financial assurances reviewed by the lead agency pursuant to
40 subdivision (c) of Section 2770, or any amendments, the lead

1 agency shall submit the plan, assurances, or amendments to the
2 director for review. All documentation for that submission shall
3 be submitted to the director at one time. When the lead agency
4 submits a reclamation plan or plan amendments to the director
5 for review, the lead agency shall also submit to the director, for
6 use in reviewing the reclamation plan or plan amendments,
7 information from any related document prepared, adopted, or
8 certified pursuant to Division 13 (commencing with Section
9 21000), and shall submit any other pertinent information. The
10 lead agency shall certify to the director that the reclamation plan
11 is in compliance with the applicable requirements of Article 1
12 (commencing with Section 3500) of Chapter 8 of Division 2 of
13 Title 14 of the California Code of Regulations in effect at the
14 time that the reclamation plan is submitted to the director for
15 review.

16 (d) (1) The director shall have 30 days from the date of
17 receipt of a reclamation plan or plan amendments submitted
18 pursuant to subdivision (c), and 45 days from the date of receipt
19 of financial assurances submitted pursuant to subdivision (c), to
20 prepare written comments, if the director so chooses. The lead
21 agency shall evaluate any written comments received from the
22 director relating to the reclamation plan, plan amendments, or
23 financial assurances within a reasonable amount of time.

24 (2) The lead agency shall prepare a written response to the
25 director's comments submitted to it, responding to each of the
26 issues raised by the director's comments, and submit the
27 response to the director at least 30 days prior to approval of the
28 reclamation plan, plan amendment, or financial assurance. The
29 lead agency's comments shall describe whether the
30 recommendations of the director are accepted by the lead agency,
31 and if not, shall specify the reasons the lead agency declines to
32 adopt them. The lead agency shall also give the director *and any*
33 *affected operator* at least 30 days' notice of the time, place, and
34 date of a hearing before the lead agency at which time the
35 reclamation plan, plan amendment, or financial assurance is
36 scheduled to be approved by the lead agency. If no hearing is
37 required by this chapter or by a local ordinance or other state law,
38 then the lead agency shall provide 30 days notice to the director
39 *and any affected operator* that it intends to approve the
40 reclamation plan, plan amendment, or financial assurance.

(3) To the extent that there is a conflict between the comments of a trustee agency or a responsible agency that are based on the agency's statutory or regulatory authority and the comments of other commenting agencies which are received by the lead agency pursuant to Division 13 (commencing with Section 21000) regarding a reclamation plan or plan amendments, the lead agency shall consider only the comments of the trustee agency or responsible agency.

(e) Lead agencies shall notify the director of the filing of an application for a permit to conduct surface mining operations within 30 days of an application being filed with the lead agency. By July 1, 1991, each lead agency shall submit to the director for every active or idle mining operation within its jurisdiction, a copy of the mining permit required pursuant to Section 2774, and any conditions or amendments to those permits. By July 1 of each subsequent year, the lead agency shall submit to the director for each active or idle mining operation a copy of any permit or reclamation plan amendments, as applicable, or a statement that there have been no changes during the previous year. Failure to file with the director the information required under this section shall be cause for action under Section 2774.4.

SEC. 21.—

SEC. 2. Section 2774.1 of the Public Resources Code is amended to read:

2774.1. (a) Except as provided in subdivision (i) of Section 2770, if the lead agency or the director determines, based upon an annual inspection pursuant to Section 2774, or otherwise confirmed by an inspection of the mining operation, that a surface mining operation is not in compliance with this chapter, the lead agency or the director may notify the operator of that violation by personal service or certified mail. If the violation extends beyond 30 days after the date of the lead agency's or the director's notification, the lead agency or the director may issue an order by personal service or certified mail requiring the operator to comply with this chapter or, if the operator does not have an approved reclamation plan or financial assurances, cease all further mining activities.

(b) An order issued under subdivision (a) shall not take effect until the operator has been provided a hearing before the lead agency for orders issued by the lead agency, or board for orders

1 issued by the director, concerning the alleged violation. Any
2 order issued under subdivision (a) shall specify which aspects of
3 the surface mine's activities or operations are inconsistent with
4 this chapter, shall specify a time for compliance which the lead
5 agency or director determines is reasonable, taking into account
6 the seriousness of the violation and any good faith efforts to
7 comply with applicable requirements, and shall set a date for the
8 hearing, which shall not be sooner than 30 days after the date of
9 the order.

10 (c) Any operator who violates or fails to comply with an order
11 issued under subdivision (a) after the order's effective date, as
12 provided in subdivision (b), or who fails to submit a report to the
13 director or lead agency as required by Section 2207, shall be
14 subject to an order by the lead agency or the director imposing an
15 administrative penalty of not more than five thousand dollars
16 (\$5,000) per day, assessed from the original date of
17 noncompliance with this chapter or Section 2207. The penalty
18 may be imposed administratively by the lead agency or the
19 director. In determining the amount of the administrative penalty,
20 the lead agency or the director shall take into consideration the
21 nature, circumstances, extent, and gravity of the violation or
22 violations, any prior history of violations, the degree of
23 culpability, economic savings, if any, resulting from the
24 violation, and any other matters justice may require. Orders
25 setting administrative penalties shall become effective upon
26 issuance thereof and payment shall be made to the lead agency or
27 the director within 30 days, unless the operator petitions the
28 legislative body of the lead agency, the board, or the superior
29 court for review as provided in Section 2774.2. Any order shall
30 be served by personal service or by certified mail upon the
31 operator. Penalties collected by the director shall be used for no
32 purpose other than to cover the reasonable costs incurred by the
33 director in implementing this chapter or Section 2207.

34 (d) If the lead agency or the director determines that the
35 surface mine is not in compliance with this chapter, so that the
36 surface mine presents an imminent and substantial endangerment
37 to the public health or the environment, the lead agency or the
38 Attorney General, on behalf of the director, may seek an order
39 from a court of competent jurisdiction enjoining that operation.

1 (e) Upon a complaint by the director, the department, or the
2 board, the Attorney General may bring an action to recover
3 administrative penalties under this section, and penalties under
4 Section 2207, in any court of competent jurisdiction in this state
5 against any person violating any provision of this chapter or
6 Section 2207, or any regulation adopted pursuant to this chapter
7 or Section 2207. The Attorney General may bring such an action
8 on his or her own initiative if, after examining the complaint and
9 the evidence, he or she believes a violation has occurred. The
10 Attorney General may also seek an order from a court of
11 competent jurisdiction compelling the operator to comply with
12 this chapter and Section 2207.

13 (f) The lead agency has primary responsibility for enforcing
14 this chapter and Section 2207 after a surface mining operator has
15 commenced lawful activity under an approved reclamation plan.
16 When the director, after providing the lead agency with written
17 comments, determines that a local lead agency approved a
18 reclamation plan, plan amendment, or financial assurance that
19 does not comply with this chapter, the board's regulations, or
20 Section 2207, the director may bring an action in the form of a
21 writ of mandamus against the lead agency to set aside any
22 approval of the plan, plan amendment, or financial assurance.
23 The director may also seek to enjoin any surface mining
24 operation from operating pursuant to the reclamation plan, plan
25 amendment, or financial assurance, unless the plan or assurance
26 is made to conform with this chapter or Section 2207, as
27 applicable. This action shall be brought by the director within 45
28 days of the lead agency's approval of the plan, plan amendment,
29 or financial assurance, provided the lead agency has given the
30 required notices provided for in subdivision (d) of Section 2774.
31 Any action shall be brought by the director within 180 days of
32 the lead agency's approval of the plan, plan amendment, or
33 financial assurance, if the lead agency has failed to provide these
34 notices.

35 (g) Remedies under this section are in addition to, and do not
36 supersede or limit, any and all other remedies, civil or criminal,
37 and include the remedy of enjoining a mining operator from
38 operating in violation of its approved reclamation plan or outside
39 the boundaries of its approved reclamation plan. In any
40 enforcement action of the director under this chapter or Section

1 2207, the director need not demonstrate the absence of
2 irreparable injury or the inadequacy of other legal remedies.

3 *SEC. 3. No reimbursement is required by this act pursuant to*
4 *Section 6 of Article XIII B of the California Constitution because*
5 *a local agency or school district has the authority to levy service*
6 *charges, fees, or assessments sufficient to pay for the program or*
7 *level of service mandated by this act, within the meaning of*
8 *Section 17556 of the Government Code.*

9 ~~SEC. 22. Section 2775 of the Public Resources Code is~~
10 ~~amended to read:~~

11 ~~2775. (a) An applicant whose request for a permit to conduct~~
12 ~~surface mining operations in an area of statewide or regional~~
13 ~~significance has been denied by a lead agency may, within 15~~
14 ~~days of exhausting his or her rights to appeal in accordance with~~
15 ~~the procedures of the lead agency, appeal to the board.~~

16 ~~(b) The board may, by regulation, establish procedures for~~
17 ~~declining to hear appeals that it determines raise no substantial~~
18 ~~issues.~~

19 ~~(c) (i) Appeals that the board does not decline to hear shall be~~
20 ~~scheduled and heard at a public hearing held within the~~
21 ~~jurisdiction of the lead agency that processed the original~~
22 ~~application within 180 days of the filing of the appeal. If the~~
23 ~~board is required to prepare, or causes to be prepared, a certified~~
24 ~~an environmental impact report in connection with the appeal,~~
25 ~~the public hearing shall be held within one year of the date of the~~
26 ~~filing of the appeal or any longer period that may be mutually~~
27 ~~agreed upon by the board and the appellant. In the event the~~
28 ~~board does not decline to hear the appeal, the lead agency shall~~
29 ~~prepare, certify, and provide to the board and the appellant, a~~
30 ~~record of the proceedings, if any, before the local lead agency,~~
31 ~~relating to the issues for which an appeal is sought. All~~
32 ~~documents prepared by the local lead agency pursuant to~~
33 ~~Division 13 (commencing with Section 21000) shall be part of~~
34 ~~the record on appeal. The reasonable costs of preparing the~~
35 ~~record on appeal shall be borne by the appellant. Upon~~
36 ~~completion of a hearing, the board shall affirm the lead agency's~~
37 ~~decision if, upon exercise of the board's independent judgment in~~
38 ~~reviewing the record, the board determines that the lead agency's~~
39 ~~decision is consistent with the provisions of this chapter,~~
40 ~~Division 13 (commencing with Section 21000), the state's~~

1 ~~policies adopted by the board for conducting surface mining~~
2 ~~operations in areas of statewide or regional significance, and the~~
3 ~~lead agency's surface mining or land use ordinances. If the board~~
4 ~~determines that the lead agency's decision is not consistent with~~
5 ~~this chapter, Division 13 (commencing with Section 21000), the~~
6 ~~state's policies adopted by the board for conducting surface~~
7 ~~mining operations in areas of statewide or regional significance,~~
8 ~~or the lead agency's surface mining or land use ordinances, the~~
9 ~~board, taking into account (1) that the areas in question have~~
10 ~~been determined to be of statewide or regional significance and~~
11 ~~(2) any conditions that were proposed by the lead agency, may~~
12 ~~grant a permit to conduct surface mining operations. In a~~
13 ~~determination to grant a permit to conduct surface mining~~
14 ~~operations, notwithstanding Section 2757, the board may impose~~
15 ~~those conditions on the mining operation it deems appropriate~~
16 ~~under the circumstances.~~

17 ~~(ii) The board shall provide notice of a public hearing required~~
18 ~~by paragraph (i), consistent with the notice provisions set forth in~~
19 ~~Section 65091 of the Government Code, including providing~~
20 ~~notice to the lead agency.~~

21 ~~SEC. 23. No reimbursement is required by this act pursuant~~
22 ~~to Section 6 of Article XIII B of the California Constitution~~
23 ~~because the only costs that may be incurred by a local agency or~~
24 ~~school district will be incurred because this act creates a new~~
25 ~~crime or infraction, eliminates a crime or infraction, or changes~~
26 ~~the penalty for a crime or infraction, within the meaning of~~
27 ~~Section 17556 of the Government Code, or changes the~~
28 ~~definition of a crime within the meaning of Section 6 of Article~~
29 ~~XIII B of the California Constitution.~~